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Attorneys for Official Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND,
LLC,
Debtor.

In re:
USA SECURITIES, LLC,
Debtor.

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.: BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED UNDER
BK-S-06-10725 LBR

Chapter 11 Cases

Judge Linda B. Riegle Presiding

**JOINT RESPONSE TO MOTION TO
EXCLUDE DEBTORS FROM HAVING
TO FILE INTER-COMPANY CLAIMS
AGAINST EACH OTHER BY THE
BAR DATE, OR ALTERNATIVELY
FOR THE APPROVAL OF THE
IMMEDIATE APPOINTMENT OF
SPECIAL COUNSEL TO FILE AND
PURSUE THE INTER-COMPANY
DEBTOR CLAIMS**

Date: October 30, 2006
Time: 9:30 a.m.

The Official Committee of Unsecured Creditors of USA Commercial Mortgage Company ("UCC"), the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC ("Diversified Committee"), the Official Committee of

1 Equity Security Holders of USA Capital First Trust Deed Fund, LLC (“FTDF
2 Committee”), and the Official Committee Of Holders of Executory Contract Rights
3 Through USA Commercial Mortgage Company (“Direct Lenders Committee”) jointly
4 support in part and oppose in part Debtors’ Motion to Exclude Debtors From Having To
5 File Inter-Company Claims Against Each Other By The Bar Date, Or Alternatively For
6 The Approval Of The Immediate Appointment Of Special Counsel To File And Pursue
7 The Inter-Company Debtor Claims (the “Motion”) (DE 1469).

8 The Committees concur that, given the potential conflicts of interest among the
9 Debtors, that the Debtors’ professionals should not be tasked with having to file inter-
10 company claims for and against each of the Debtors’ estates by the November 13, 2006
11 bar date.

12 The Committees support the Debtors’ professionals’ proposed solution of extending
13 the bar date for filing the inter-company claims to a later date and suggest that
14 December 1, 2006 be the inter-company claim bar date. The Committees are negotiating a
15 joint plan term sheet that would resolve and fix the allowed amount of such inter-company
16 claims. Most likely, this joint plan term sheet will form the basis for a further modified
17 plan of reorganization that will be filed on or before the modified Plan solicitation
18 packages are mailed, if not sooner. In the event the Committees are unable to reach
19 agreement on the joint plan term sheet, then the inter-company claims can be prepared at
20 such later date.

21 The Committees, however, believe that the Debtors’ professionals’ alternative
22 solution of employing special counsel in each of the estates to prepare inter-company
23 claims is unnecessary and wastefully expensive. Rather, in the event the inter-company
24 claim bar date is not extended, each of the UCC, Diversified Committee and FTDF
25 Committees represents the applicable constituency primarily affected by inter-company
26 claims for their respective estates. Accordingly, each of these Committees (through their

1 respective Committee professionals) should be authorized by the Debtors, and this
2 authority confirmed by this Court, to file inter-company claims for their respective estates.

3 Stipulated representation of a debtor's estate by an official committee is permissible
4 under *Liberty Mutual Insurance Company v. Official Unsecured Creditors Committee of*
5 *Spaulding Composites Co. (In re Spaulding Composites Co.)*, 207 B.R. 899, 904 (9th Cir.
6 BAP 1997), which stated:

7 This case is somewhat unusual in that the setting for derivative
8 litigation often involves a debtor-in-possession ("DIP") who is hostile to
9 proposed litigation. See e.g. *Curry*, 57 B.R. at 828,¹ *Louisiana World*
10 *Exposition v. Federal Ins. Co.*, 858 F.2d at 247;² *In re STN Enterprises*, 779
11 F.2d at 901.³ In that setting, the concern is that the DIP is failing to attend to
12 litigation which it should pursue. Here, however, rather than opposing the
Committee's suit, Spaulding approved of it, and Liberty argues the converse
to the above – that is, Liberty argues that the Committee is fostering estate
litigation which should not be pursued. The question then, is whether a DIP
may stipulate to representation by an unsecured creditors' committee. We
hold that it may.⁴

13 In addition, Bankruptcy Code § 1103(c)(5) states "A committee appointed under section
14 1102 of this title may perform such other services are in the interest of those represented."⁵

15 Further, the Committees respectfully request that if claims must be filed by the
16 existing November 13, 2006 deadline, then the Committees should be authorized to file
17 inter-company claims in an undetermined amount, which claims can be later modified, if
18 necessary. There is no need to incur the significant expense to review, research and
19 prepare all of the Debtors' claims against one another, and the filing of claims in
20 undetermined amounts will preserve the claims. As mentioned above, the Committees are
21 hopeful that they will reach a global resolution for these cases soon that will, among other
22 issues, fix the allowed amount of inter-company claims. It would be a significant waste of

23 ¹ *In re Curry and Sorensen, Inc.*, 57 B.R. 824 (9th Cir. BAP 1986).

24 ² *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d 233 (5th Cir. 1988).

25 ³ *In re STN Enterprises*, 779 F.2d 901 (2nd Cir. 1985).

26 ⁴ See also, *In re Commodore Intern. Ltd.*, 262 F.3d 96, 99-100 (2nd Cir. 2001); *In re*
Walnut Leasing Co., 1999 WL 729267 (E.D. Pa. 1999).

⁵ See *Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics*
Corp. v. Chinery, 330 F.3d 548, 562 (3rd Cir. 2003); *contra, In re Fox*, 305 B.R. 912 (10th
Cir. BAP 2004).

1 investors' and creditors' potential recoveries to require the Committees to file the inter-
2 company claims in fixed amounts at this time given that the parties may very well resolve
3 these claims consensually in the near term. In the event such agreement is not reached
4 among the Committees by a date certain (and December 1, 2006 may be such date), then
5 estate funds should be used by the Committees to review, research and prepare these
6 claims.

7 **Conclusion**

8 The Committees support the Debtors' request to be excused from the obligation to
9 file inter-company claims by the bar date, but vigorously oppose the Debtors' suggestion
10 to employ three additional sets of counsel in these cases for this task. The Committees
11 support the Debtors' suggestion that the inter-company bar date be extended (possibly to
12 December 1, 2006) or, in the event such bar date is not extended, obtaining authorization
13 from the Court to permit the UCC, the Diversified Committee and FTDF Committees to
14 file the requisite inter-company claims in unknown amounts.

15 Dated October 20, 2006.

16 **LEWIS AND ROCA LLP**

17 By /s/ RC (NV Bar #006593)

18 Susan M. Freeman, AZ 4199 (pro hac vice)

19 Rob Charles, NV 6593

20 *Attorneys for Official Unsecured Creditors' Committee*
21 *for USA Commercial Mortgage Company*
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